

# **EXHIBIT E**

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE WESTERN DISTRICT OF MISSOURI.

3  
4 MAXUS REALTY TRUST, INC., )

5 )  
6 Plaintiff, )

7 vs. ) Case No. 06-0750-CV-W-ODS

8 RSUI INDEMNITY COMPANY )

9 Defendant. )  
10  
11

12 DEPOSITION OF  
13 DeANN TOTTA  
14 TAKEN ON BEHALF OF THE DEFENDANT  
15 JULY 30, 2007  
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1 had incurred by the hurricane.

2 Q. (By Ms. Murphy) Was that amount in excess of six  
3 million, was that based on any documentation?

4 A. Yes.

5 Q. Would that have been the Flagship estimate issued  
6 in December of 2005?

7 A. That's correct.

8 Q. Would it be fair to say that Flagship was hired by  
9 MPI to prepare an estimate estimating the costs of  
10 the value -- rather -- strike that.

11 Would it be fair to say that Flagship was  
12 hired to prepare an estimate estimating the amount  
13 of damage sustained by Waverly?

14 A. They were hired by counsel to give some sort of  
15 representation as to the actual cost of the  
16 damage.

17 Q. Would it be fair to say that the estimate  
18 concluded by Flagship was used in connection with  
19 the insurance claim presented to the companies for  
20 payment?

21 A. Yes, that is correct.

22 Q. In other words, it is MPI's position that payments  
23 in excess of \$6,000,000 should have been made  
24 based upon Flagship's estimates; would that be  
25 fair to say?

1 was sustained whether by video, witness or  
2 otherwise, was there water damage to the property?

3 MR. ABRAMS: Can you restate -- read back  
4 that question.

5 (The last question was read by the  
6 reporter.)

7 MR. ABRAMS: I'm going to object as --  
8 well, I'll object that it calls for speculation,  
9 but go ahead.

10 You can answer.

11 Q. (By Ms. Murphy) If you don't know, you don't  
12 know.

13 A. Yeah, I don't know.

14 Q. So you don't know how much, if any, of the damage  
15 was caused by wind?

16 A. No. The report that we received from Flagship  
17 dated in May of 2006 in which we referred to  
18 earlier was wind damage.

19 Q. To your knowledge, did the Flagship report  
20 contain -- strike that.

21 To your knowledge, was the Flagship  
22 report an estimate of all loss and damage  
23 sustained by Waverly?

24 A. No.

25 Q. Did it carve out the specific type of damage

1           caused by a specific cause whether it be wind,  
2           flood or something else?

3       A.   Specifically wind damage to the property.

4       Q.   And do you know whether the Flagship estimate  
5           carved out the damage by floor of the buildings,  
6           by location or something else?

7       A.   I believe so, yes.

8       Q.   And what's the basis for your understanding as to  
9           how Flagship prepared the estimate and divided the  
10          damage?

11      A.   I do not -- I understand that through counsel  
12          Flagship was hired to come up with an estimate for  
13          wind damage to the property above a certain floor  
14          line. That was supposedly to be for settlement  
15          purposes only back in the earlier onset of the  
16          claim. How they derived at those numbers for  
17          those -- for the wind damage that occurred from  
18          that floor line, I don't know.

19      Q.   When we say the floor line, are you meaning the  
20          floor that separates the first floor from the  
21          second floor or are you referring to a water line?

22      A.   Correct, second floor.

23      Q.   The second floor?

24      A.   Uh-huh.

25      Q.   Is it your understanding that Flagship was told to